

STATE OF NEW MEXICO
COUNTY OF TAOS
EIGHTH JUDICIAL DISTRICT COURT

FILED IN MY OFFICE
8TH JUDICIAL DIST. COURT
TAOS COUNTY, NM ON

2018 AUG 29 PM 4:49

PRESIDING JUDGE: JEFF FOSTER McELROY

BERNABE P. STRUCK
CLERK OF THE
DISTRICT COURT

No. D-820-CR-2018-00167

No. D-820-CR-2018-00170

STATE OF NEW MEXICO

V.

SIRAJ IBN WAHHAJ
JANY LAVELLE

ORDER OF DISMISSAL WITHOUT PREJUDICE

THIS MATTER having come before the Court on the Defendants' Motions to Dismiss under Rule 5-302(A)(3) NMRA, the Court having reviewed the motion, having heard oral argument and being otherwise sufficiently advised, the Court enters the following findings and conclusions:

1. The court has jurisdiction over the parties and the subject matter.
2. On August 8, 2018, these defendants had a first appearance before the district court.
3. On August 14, 2018, the district court denied the state's motion for preventative detention.
4. The district court set conditions of release that had to be met prior to the release of the defendants.
5. Siraj Ibn Wahhaj could not exercise his conditions of release because he was in detention from a fugitive warrant from Georgia from August 14, 2018 through August 23, 2018.

For other reasons, he did not exercise his conditions of release once the state dismissed the fugitive warrant charge. He was in custody on this matter from August 8 through the date of this order.

6. Jany Leville could not exercise her conditions of release because she was in federal custody on an immigration warrant. She was in custody on this matter from August 8 through the date of this order.
7. Rule 5-302(A)(1) NMRA reads, “**Time limits.** A preliminary examination shall be scheduled and held within a reasonable time but in any event **no later than ten (10) days if the defendant is in custody**, and no later than sixty (60) days if the defendant is not in custody, of... **the first appearance;**” (emphasis added)
8. The ten days excludes weekends and holidays.
9. Therefore, the time for conducting a preliminary examination would have been August 22, 2018 or fourteen days after the first appearance.
10. The District Attorney failed to request for a preliminary hearing. No preliminary hearing was held while these defendants were in custody in violation of Rule 5-302(A)(1).
11. As of August 29, 2018, the defendants have been in custody for twenty-one days from the date of first appearance.
12. Rule 5-302(A)(2) NMRA provides for extensions of time for a preliminary hearing. The state failed to request an extension.
13. The court is without authority to retroactively grant an extension following the expiration of the deadline. Regardless, there were no exceptional circumstances that justified the delay in conducting a preliminary hearing.

14. The District Attorney was not diligent in the prosecution of this case and adhering to the rules of criminal procedure.
15. Rule 5-302(A)(3) NMRA gives the court no discretion as to the remedy for violation of the rule.
16. Rule 5-302(A)(3) NMRA reads, “[i]f a preliminary examination is not held within the time limits in this rule, the court shall dismiss the case without prejudice and discharge the defendant.”

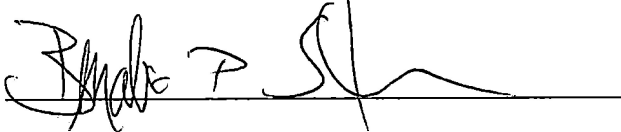
IT IS THEREFORE ORDERED that all pending claims are dismissed without prejudice for failing to comply with the time limits and the defendants are discharged.


JEFF FOSTER McELROY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned Employee of the District Court of Taos County, New Mexico, do hereby certify that I served a copy of this document to all parties.

By:



Date:

August 29, 2018